XII-189 (Jail) C. J. P. R./I-91

CF0000058552

CRA. 975/94 (G)

APPEAL OF PRISONER

Division Bench (Criminal)

No. 349/92 Name तीरथ

Father's name लोरिलाल मुहार, निवासी ग्राम- डाटबंजा, थाना- कुरिसदाह

Residence जिला- राजनांदगाँव (म.प्र.) Age 25 साल

Sentenced to आजीवन कारावास, 5 वर्ष, 3 वर्ष, 1 वर्ष on 5-3-1994

Under Section 302/450/25.27 आर्म्स एक्ट by अति० सत्र न्यायाधीश, खैरागढ़ सत्र खंड राजनांदगाँव (म.प्र.)

अपील क्र० 8/93

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received 8-3-1994

3 Date on which Appeal sent 19-3-1994

4 Whether the prisoner wishes to be represented or not.

No. 349/92 Name तीरथ उर्फ लोरिलाल मुहार

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

Regd.

No. 250 /वि०/94 Dated 19/3/1994 199

Forwarded to the अति० पंजीयक महोदय, माननीय उच्च न्यायालय मध्यप्रदेश, जबलपुर (म.प्र.)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

High Court of Madhya Pradesh
JABALPUR
Recd. on 29 MAR 1994
Registration No. 994

Superintendent
Central Jail, Raipur. (M.P.)

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. Dated 199

Forwarded to the

Date of receipt in Appellate court

[P. T. O.]

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक CRA. NO. 975 सन् 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Shri L.C. Bhadoo and

Hon'ble Shri V.K. Shrivastava, J.J.

1-12-2005

Shri R.K. Sharma, counsel for the appellant.

Shri G.K. Beriwal, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral.

By this appeal through Superintendent, Central Jail, Raipur accused/appellant Teerath has questioned the legality of conviction and sentence awarded against him by learned Additional Sessions Judge, Khairagarh in S.T. No.8/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Sections 302 & 450 of the I.P.C. and under Sections 25 & 27 of the Arms Act, sentenced him to undergo imprisonment for life and to undergo R.I. for 5 years, 3 years and 1 year respectively.

The prosecution case, in brief, is that in the afternoon of 22nd May 1992 deceased Ganesh brought a teak wood from the forest for preparing the cot. The absconding accused Sukrut, who was the Kotwar, came to the house of Ganesh and said that as to why he has brought a teak wood from the forest, and he would report the matter, on which some quarrel took place between Ganesh and Sukrut. In that process, Ganesh slapped Sukrut twice. Sukrut left the place saying that he would see to him. After some time, Sukrut along with accused Teerath came back to the house of Ganesh. Teerath asked Ganesh as to why he has slapped his brother. Sukrut pushed Ganesh towards the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

wall. Accused Teerath took out a knife, which was with him and attacked Ganesh with a knife on his left armpit, and left the scene of occurrence. Ganesh fell down and blood started oozing out of the injury. PW-2 Kamla Bai, wife of deceased Ganesh, started crying and called Melaram and other villagers and apprised them about the incident. Ganesh succumbed to the injuries on the spot. The matter was reported by Kamla Bai in the Police Station Chchuikhadan under Ex.-P/4. The Investigating Officer prepared Panchanama of the dead body of Ganesh under Ex.-P/10. The dead body was sent for postmortem examination under Ex.-P/1. The Investigating Officer took into possession the blood stained soil and plain soil from the place of occurrence under Ex.-P/6. The teak wood was taken into possession under Ex.-P/8. While in the police custody the accused/appellant gave information Ex.-P/5 under Section 27 of the Indian Evidence Act regarding the place where the knife, weapon of offence, was concealed by him. In pursuance of the said information the accused/appellant got recovered the knife from him under Ex.-P/6. The blood stained Lungi was taken into possession under Ex.-P/9.

After completion of the investigation, charge sheet was filed against the present accused/appellant and Sukrut in the Court of Judicial Magistrate, 1st class, Khairagarh who in turn committed the case to the Sessions Court, Rajnandgaon from where learned Additional Sessions Judge, Khairagarh received the case on transfer for trial.

The prosecution in order to prove the offence against the accused/appellant examined as many as 10 witnesses. On the other hand, statement of the accused/appellant was recorded under Section

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that on the fateful day he was not in the village. During the pendency of the case, Sukrut was granted bail but he jumped the bail and remained absconding. Learned Additional Sessions Judge after hearing the arguments of learned counsel for the parties, convicted and sentenced the accused as mentioned in the earlier part of this judgment.

We have heard Shri R.K. Sharma, counsel for the appellant and Shri G.K. Beriwal, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Shri R.K. Sharma, learned counsel for the accused/appellant very fairly did not dispute the fact of death of Ganesh as homicidal in nature. Apart from that, PW-1 Dr. T.C. Singhi, who conducted the postmortem on the dead body of Ganesh, has stated that on 23-5-1992 at about 7.30 am he conducted the postmortem on the dead body of Ganesh and found that there was cut injury on the left armpit. Stab wound was extending up to the left lung and it pierced up to left from the place of 6th rib. He has further stated that the cause of death of the deceased was shock as a result of haemorrhage and his left lung was found punctured. The said injury was sufficient in the ordinary course of nature to cause the death. The death of Ganesh was homicidal in nature. Therefore, in view of the above evidence, it is established that the death of Ganesh was homicidal in nature.

As far as the involvement of the accused/appellant in crime in question is concerned, Shri R.K. Sharma, learned counsel for the accused/appellant argued only to the extent that the accused/appellant

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had not attacked the deceased with the intention to cause his death, as the deceased first slapped the brother of the accused/appellant namely, Sukrut, thereafter Sukrut and the accused/appellant came, and some quarrel started. In that process, the accused/appellant attacked the deceased.

On the other hand, Shri G.K. Beriwal, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent argued that the manner in which the accused attacked the deceased, the place of injury and the nature of weapon indicates that the accused attacked the deceased with the intention to cause his death, therefore, finding of the trial Court is sound and it is based on legal principles, and same does not require interference by this Court.

In order to appreciate the arguments advanced by learned counsel for the parties, if we look into the evidence of PW-2, Kamla Bai, wife of the deceased, who witnessed the crime, she has categorically stated that at about 2 to 2.30 pm she along with her husband returned from the forest. They brought a piece of wood. Sukrut came thereafter who was working as Kotwar at the relevant time and asked her husband as to why he has brought this wood from the forest and he would report the matter on which her husband said that he has brought this wood for his personal use. But Sukrut said that he would go to the police station for reporting the matter, upon which a dispute arose between them and in that process, her husband slapped Sukrut. Upon which Sukrut left the place and thereafter Teerath along with Sukrut came to their house. Accused Teerath said that who has beaten his brother. The accused pushed the door of their house which fell down. She was standing by the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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side of her husband. The accused took out a knife from his pant and attacked her husband with a knife on the armpit, as a result of which the knife pierced. Thereafter both the accused persons left the scene of occurrence. Her husband fell down on the earth. She raised cries and apprised the village Sarpanch Mukhau and Patel Melaram about the incident. Thereafter, she went to the police station and reported the matter. Report is Ex.-P/4. PW-3 has corroborated the above evidence of Kamla Bai and he has stated that at about 3 pm the father of Ganesh came and informed that the accused/appellant and his brother Sukrut have killed Ganesh. They went to the house of Teerath and they entered the house. Thereafter the matter was reported to the police. PW-7 Hirau Ram has stated that on the fateful day Kamla Bai was crying and when he was going towards the house of Kamla Bai, he saw that accused Teerath and his brother Sukrut were coming out from the house of Ganesh. The baniyan of Teerath was stained with blood. Teerath was carrying a knife in his hand. Therefore, from the above evidence of PW-2 and PW-7 it is established that accused/appellant Teerath was the author of the fatal injury which was caused by him in the left armpit of the deceased. In the cross-examination of these witnesses, the defence has not been able to elicit any fact which makes the evidence of these witnesses unreliable or untrustworthy. Therefore, involvement of the accused/appellant in attacking the deceased with a knife is established. The finding of the trial Court to this extent does not require any interference by this Court.

As far as the offence punishable under Section 302 of the I.P.C. made out against the accused/appellant is concerned, from the evidence

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which has been discussed above it is established that in the first instance Sukrut went to the house of Ganesh and asked him as to why he has brought the wood from the forest. He would report the matter to the Police upon which some quarrel started and Ganesh slapped Sukrut twice, then Sukrut left the place challenging Ganesh that he would see to it, and immediately thereafter he again came back with the accused/appellant. The accused/appellant said that how Ganesh has slapped his brother. He took out a knife which was kept in his pant and stabbed near the armpit. The intention of the author of the crime can be gathered from the facts and circumstances of each case i.e. the manner in which the crime was committed, weapon of offence which was used in committing the crime and the place where the injury was caused. If we look into the above aspects, the accused/appellant attacked with a knife that too on a vital part of the body i.e. armpit with such a force that knife pierced from the place near 6th rib and even punctured left lung of the deceased as a result of which he died on the spot. It has nowhere come in the evidence that even Ganesh was having some weapon, so attacking an armless person with such a deadly weapon that too on a vital part of the body indicates the intention of the accused that he attacked the deceased with intention to cause his death. Therefore, we do not find any substance in the argument of learned counsel for the accused/appellant that the accused/appellant had not attacked the deceased with intention to kill him.

As far as the offences under Section 450 of the I.P.C. and under Sections 25 and 27 of the Arms Act is concerned, same are also proved.

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Barve	In the result, the appeal fails and same is dismissed. All the sentences shall run concurrently. Sd/- L.C.BHADOO Judge Sd/- V.K.Shrivastava Judge	

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.05 11:28:53 +0530